

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
UNITED STATES OF AMERICA,

-against-

VICTOR LORENZANA,

Defendant.
----- X

No. 03 Cr. 1256 (JFK)
No. 16 Civ. 4355 (JFK)

ORDER

JOHN F. KEENAN, United States District Judge:

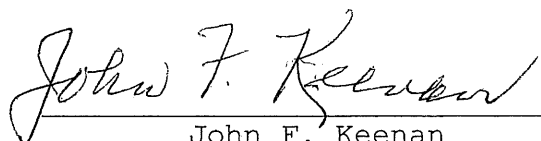
On June 3, 2020, the Court directed the Government to file a letter regarding whether the stay of proceedings in this habeas action should remain in effect. On June 17, 2020, the Government informed the Court that the stay should be lifted and Defendant Victor Lorenzana's motion to vacate his conviction and sentence should be denied because the issue he raises was resolved by the Second Circuit in United States v. Hill, 890 F.3d 51 (2d Cir. 2018).

Accordingly, Lorenzana shall have until August 5, 2020, to file a response. Absent further order, Lorenzana's motion will be considered fully submitted as of that date.

The Clerk of Court is respectfully directed to (1) terminate the stay imposed in this case, and (2) mail a copy of this Order and the Government's letter (ECF No. 224, attached) to Lorenzana.

SO ORDERED.

Dated: New York, New York
June 17, 2020


John F. Keenan
United States District Judge



U.S. Department of Justice

United States Attorney
Southern District of New York

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

June 17, 2020

BY ECF

Hon. John F. Keenan
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Victor Lorenzana*, S6 03-CR-1256-JFK-1

Dear Judge Keenan:

On June 9, 2016, Victor Lorenzana, the defendant, filed a placeholder motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 seeking vacatur of his conviction on Counts Six, Seven and Nine, for violating 18 U.S.C. § 924(c), in light of *Johnson v. United States*, 135 S. Ct. 2251 (2015). (ECF No. 198 at 4.) Under the Court's standing order, the form motion is to be supplemented at a later date by a brief that "more fully sets forth the basis for the requested relief." (ECF No. 200 at 1.)

On February 2, 2018, the Court stayed the case pending resolution of potentially relevant decisions of the Supreme Court and Second Circuit. (ECF No. 205 at 1; *see* ECF No. 218.) On June 3, 2020, the Court ordered the Government to inform the Court whether the stay should be lifted. (ECF No. 218 at 1.)

The stay in this case should be lifted, and the motion should be denied because the issue in this case was resolved by the Second Circuit in *United States v. Hill*, 890 F.3d 51 (2d Cir. 2018). According to the placeholder motion, the defendant seeks vacatur of his conviction on Counts 6, 7 and 9 because they were not predicated on a conviction for a "crime of violence." (ECF No. 198 at 4; *see* 18 U.S.C. § 924(c)(1)(A) (imposing criminal penalties on "[a]ny person who, during and in relation to any crime of violence . . . uses or carries a firearm"); *id.* § 924(c)(3) (defining "crime of violence"); *cf. Johnson*, 135 S. Ct. at 2563.) In this case, the predicate offense for each of the Section 924(c) counts was a substantive Hobbs Act robbery. (ECF No. 198 at 4; *see* 18 U.S.C. § 1951.) And in *Hill*, decided after *Johnson*, the Second Circuit held that "Hobbs Act robbery is a crime of violence under 18 U.S.C. § 924(c)(3)(A)." *Hill*, 890 F.3d at 53.

Accordingly, this case is ready for decision. The stay should be lifted, and the motion should be denied.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney

by: /s/T. Josiah Pertz
T. Josiah Pertz
Assistant United States Attorney
(212) 637-2246